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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CARMEN ABBOTT and THOMAS ABBOTT,	)	3:17-cv-00149-HDM-VPC
	)	
Plaintiffs,	)	
	)	ORDER
	)	
vs.	)	
	)	
BOSTON SCIENTIFIC CORPORATION,	)	
RENOWN REGIONAL MEDICAL CENTER,	)	
VICKIE L. TIPPETTE, M.D., MYRON	)	
W. BETHEL, M.D., and JOHN DOES 1-	)	
XX, inclusive,	)	
	)	
	)	
Defendants.	)	
	)	

Before the court is Boston Scientific Corporation's ("Boston Scientific") motion to stay all proceedings pending transfer to the United States District Court for the Southern District of West Virginia as part of *In re: Boston Scientific Corp., Pelvic Repair System Prods. Liab. Litig.*, MDL No. 2326. (ECF No. 5). On March 14, 2017, the Clerk of the Panel determined that this action is not appropriate for inclusion in the MDL. (ECF No. 7). Accordingly, Boston Scientific Corporation's motion to stay all proceedings pending transfer to MDL (ECF No. 5) is denied.

1 Also before the court is plaintiffs' motion to remand. (ECF No.  
2 8). Boston Scientific opposed the motion (ECF No. 13) and plaintiffs  
3 replied (ECF No. 15).

4 Section 1332 provides a United States district court with  
5 original jurisdiction over "all civil actions where the matter in  
6 controversy exceeds the sum or value of \$75,000, exclusive of interest  
7 and costs, and is between . . . citizens of different States." 28  
8 U.S.C. § 1332. Section 1441(a) provides that "any civil action  
9 brought in a State court of which the district courts of the United  
10 States have original jurisdiction may be removed by the defendant or  
11 defendants, to the district court of the United States for the  
12 district and division embracing the place where such action is  
13 pending." 28 U.S.C. § 1441(a). Section 1447(c) provides, "If at any  
14 time before the final judgment it appears that the district court  
15 lacks subject matter jurisdiction, the case shall be remanded." 28  
16 U.S.C. § 1447(c) .

17 "Federal jurisdiction must be rejected if there is any doubt as  
18 to the right of removal in the first instance." *Gaus v. Miles, Inc.*,  
19 980 F.2d 564, 566 (9th Cir. 1992). In suits originally brought in  
20 state court and then removed, there exists a "strong presumption"  
21 against removal jurisdiction such that the defendant bears the burden  
22 of establishing that removal is proper. *Id.* at 566-67. It is  
23 uncontested that plaintiffs' complaint names three non-diverse  
24 defendants: Dr. Vickie L. Tippetts, Dr. Myron W. Bethel, and Renown  
25 Regional Medical Center ("Healthcare Provider Defendants"). (See ECF  
26 No. 1-1 (Complaint) at ¶¶ I, IV, and V). Defendant Boston Scientific  
27 removed this case on March 8, 2017, based on diversity of citizenship  
28 (ECF No.1) and now opposes remand on the basis of fraudulent

1 misjoinder (ECF No. 13). Boston Scientific alternatively requests  
2 that the court sever and remand the claims against the Healthcare  
3 Provider Defendants to state court pursuant to Rule 21.

4 Pursuant to Federal Rule of Civil Procedure 20, permissive  
5 joinder among defendants must meet two specific requirements: (1) the  
6 right to relief is asserted against them jointly, severally, or in the  
7 alternative with respect to or arising out of the same transaction,  
8 occurrence, or series of transactions or occurrences; and (2) a  
9 question of law or fact is common to all defendants must arise in the  
10 action. Fed. R. Civ. P. 20(a)(2). Courts "start with the premise  
11 that Rule 20 . . . regarding permissive joinder is to be construed  
12 liberally in order to promote trial convenience and to expedite the  
13 final determination of disputes, thereby preventing multiple  
14 lawsuits." *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*,  
15 558 F.2d 914, 917 (9th Cir. 1977).

16 Rule 21 provides that the court may, "on just terms, add or drop  
17 a party" from an action or "sever any claim against a party." "If the  
18 test for permissive joinder [under Rule 20] is not satisfied, a court,  
19 in its discretion, may sever the misjoined parties, so long as no  
20 substantial right will be prejudiced by the severance." *Coughlin v.*  
21 *Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997).

22 Boston Scientific argues that neither prong of Rule 20(a)(2) is  
23 met in this case. First, Boston Scientific asserts that the product  
24 liability claims against it are distinct from the medical negligence  
25 claims against the Healthcare Provider Defendants, requiring different  
26 facts and evidence. Second, Boston Scientific argues that the claims  
27 against it and the Healthcare Provider Defendants are factually  
28 distinct and that any liability that may be found against Boston

1 Scientific would not be a basis for liability as to the Healthcare  
2 Provider Defendants.

3       The court finds that for the purposes of remand, plaintiffs'  
4 claims against Boston Scientific and the Healthcare Provider  
5 Defendants are sufficient to satisfy the joinder requirements.  
6 Plaintiffs allege that during the surgery, "the PRODUCT either  
7 malfunctioned due to a design or a manufacturing defect, and in breach  
8 of all warranties, express and implied, or defendants TIPPETTE and  
9 BETHEL negligently and below standards of care failed to properly  
10 utilize the device, which led to its malfunction." (ECF No. 1-1 at  
11 ¶ XI). These acts and omissions form the basis for Plaintiffs' claims  
12 and combine to cause a single injury in this case. Thus, the claims  
13 against the defendants relate to the same transaction or occurrence  
14 sufficient to satisfy Rule 20(a). The court also finds that the  
15 claims against Boston Scientific and the Health Care Providers share  
16 questions of fact. Plaintiffs allege that the defendants' conduct  
17 caused a single injury and seek to recover the same damages from all  
18 defendants.

19       The court declines to sever under Rule 21 as plaintiffs would be  
20 prejudiced by the severance and it would not promote judicial  
21 efficiency. Accordingly, Boston Scientific's motion to stay all  
22 proceedings (ECF No. 5) is denied. Plaintiffs' motion to remand (ECF  
23 No. 8) is granted. Having remanded this case, the court declines to  
24 consider Boston Scientific's motion to dismiss (ECF No. 10).

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This case is remanded to the District Court of the State of Nevada in and for the County of Washoe for all further proceedings. Each party shall bear its own costs and attorney's fees incurred as a result of the removal. The clerk shall mail a certified copy of this order of remand to the clerk of the state court and shall administratively close file no. 3:17-cv-00149-HDM-VPC.

IT IS SO ORDERED.

DATED: This 13th day of April, 2017.

Howard D McKibben

UNITED STATES DISTRICT JUDGE